

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

**SCOTT MANDIROLA, DIRECTOR,
DIVISION OF WATER AND WASTE
MANAGEMENT, WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Plaintiff,

v.

**Civil Action No. 07-C-3
Civil Action No. 10-C-96**

**HOBET MINING, LLC, and
CATENARY COAL COMPANY, LLC**

Defendants.

[PROPOSED] ADDENDUM TO MODIFIED SETTLEMENT AND CONSENT ORDER

I. Introduction

The parties hereby agree to this Addendum to the Modified Settlement and Consent Order entered by the Court on April 9, 2013, in order to add Outlet 044 on NPDES Permit WV1016776 to the existing order, as set forth in the parties' Joint Motion to Modify Settlement and Consent Order to Include Addendum. Accordingly, the parties agree to the following terms:

II. Order of Compliance

1. Hobet shall identify a treatment technology for Outlet 044 on NPDES Permit WV1016776 within 30 days after the entry of this Order by the Circuit Court. It will install treatment to achieve compliance with the permitted effluent limit for selenium no later than March 15, 2016.

2. Hobet shall be assigned and comply with the following interim limits leading to compliance with the final selenium limits at Outlet 044 on NPDES Permit WV1016776:

Outlet	Interim Limits Entry date of Order to March 31, 2016
WV1016776 – 044	20 ug/l – Daily Maximum

3. The WVDEP shall enforce the above interim limits through the stipulated penalties set forth below for Outlet 044. These interim limits will terminate on December 15, 2016. In the event Hobet violates the interim limit for selenium as described above, Hobet shall be obligated to pay the following stipulated penalties to the WVDEP of \$2,000 per violation. For the second consecutive violation of an interim limit which does not show a reduction in the level of selenium from the first violation, Hobet shall pay \$2,500. For the third consecutive and subsequent violations which do not show a reduction in the level of selenium from the previous violation interim limit, Hobet shall pay \$3,000. Consecutive violations that demonstrate reductions in the level of selenium from the previous violation shall be assessed a stipulated penalty of \$2,000

4. The parties to the Federal Consent Decree have reviewed the existing compliance schedule for the purpose of combining outlets to achieve more efficient treatment, while accelerating the rate at which selenium is reduced from existing outlets. Upon completing their analysis and discussing their conclusions, the parties have concluded that three Category I outlets should be combined with future Category III and IV treatment systems. Specifically, Outlets 005, 001 on WV1020889 and 036 on WV0099392 have relatively infrequent and low flows (23gpm, 43gpm and 10gpm, when flowing, respectively). The flows from Outlets 005 and

001 (both Category I) will be combined with and discharged through Outlet 001 on WV1016776 (Category IV). The proposed combination will increase the flow in Connelly Branch, but there will be no net change to the flow in Mud River. In addition, the flow from Outlet 036 will be combined with and discharged through Outlet 037 on WV0099392 (Category III). As both of these outlets currently discharge into Sugartree Branch of the Mud River, there will be no net change to the flow in this stream.

5. In addition, treatment will be accelerated at Outlet 027 on WV0099392, a Category II outlet with a treatment deadline of March 15, 2016, by installing a treatment system by the Category I deadline (March 15, 2015).

6. The parties to the Federal Consent Decree have concluded that the two actions of combining outlets and accelerating treatment at Outlet 027 will reduce the total selenium loading from all of the outlets at issue. The combination of these actions will reduce the total volume of selenium discharged to the Mud River watershed as compared to the volume discharged under the existing schedule.

7. DEP has reviewed Hobet's calculations of the net reduction in selenium loading anticipated from the above-referenced modification of the compliance dates. It has also reviewed the discharge monitoring report data for these outlets which indicate that the outlets designated to be given a later compliance date flow intermittently and at very low volumes. By comparison, Outlet 027 where treatment and compliance will be accelerated flows regularly. DEP has concluded that the change agreed to by the parties to the Federal Consent Decree and proposed for the existing Modified Consent Order will result in a net benefit to the aquatic environment.

8. For these reasons the DEP concurs with this change to the existing Modified Settlement and Consent Order as last modified, and asks that this Addendum be entered.

The circuit clerk is directed to send copies of this Addendum, once entered, to all counsel of record.

Entered this _____ day of _____, 2014.

WILLIAM S. THOMPSON
Circuit Judge